

[Avery v. Duke Power Co.](#), 94-ERA-46 (Sec'y Mar. 8, 1996)

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DATE: March 8, 1996
CASE NO. 94-ERA-46

IN THE MATTER OF

ROBERT AVERY,

COMPLAINANT,

v.

DUKE POWER COMPANY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Settlement Agreement seeking approval of the settlement and dismissal of the complaint in Complainant's action before the U.S. Department of Labor, but have agreed to preserve Complainant's right to pursue his claim against the Respondent before the North Carolina Industrial Commission denominated as Case I.C. No. 413107. See Preamble and Sections 5 and 7 of the agreement.

The Administrative Law Judge (ALJ) issued a decision on February 14, 1996, recommending that the

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settlement be approved. The request for approval is based on an agreement entered into by the parties, therefore, I must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and*

Yunker v. Georgia Power Co., Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. See Sections 3, 5 and 7. As set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations the Respondent violated the ERA.

I find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint.

Accordingly, I APPROVE the agreement and DISMISS THE
COMPLAINT WITH PREJUDICE. See Section 2.
SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.